HIGH COURT OF UTTARANCHAL AT NAINITAL.

Second Appeal No. 567 of 2001
Old Second Appeal No. 84 of 1987

Smt. Malti Devi Wife of Lal Singh,
Resident of Dewal Chaur, Tehsil Haldwani
District Nainital. **….. Appellant.**

Versus

Sri K.B. Chandra Son of Sri Deo Jang Chandra,
Resident of Dewal Chaur, Tehsil Haldwani,
District Nainital.
…. **Respondent.**

Sri V.B.S. Negi, learned counsel for the appellant.
None appeared for the respondent.
Date April 28, 2006.

Hon. B.S. Verma, J.

This Second Appeal has been preferred against the judgment and decree dated 10-11-1986 passed in Civil Appeal No. 31 of 1984 Smt. Malti Devi Vs. K.B. Chandra by the Civil Judge Nainital as well as judgment and decree dated 04-1-1984 passed by the Munsif, Haldwani (Nainital) in Civil Suit No. 155 of 1981, Malti Devi Vs. K.B. Chandra, whereby the Suit of the plaintiff-appellant was dismissed and the appeal preferred by the plaintiff before the appellate court too was dismissed.

The plaintiff-appellant filed a suit for permanent injunction against the defendant-respondent on 18-9-1991 for restraining him from interfering in the disputed Gule No. 97 of village Dewal Chaur, Haldwani and directing the defendant to restore the said Gule to its original position. The trial court after hearing the parties and perusing the material on record did not find favour with the plaintiff and dismissed the suit. The plaintiff went up in appeal before the Civil Judge Nainital. The Appellate Court on the basis of the judgment and decree passed in Original Suit No. 70 of 1980 decided by the Munsif Haldwani on 22-9-1980 found that

the plaintiff had brought the earlier suit against the defendant in respect of the same Gule, which was dismissed and it was also found that the Appeal No. 158 of 1980 preferred by the plaintiff-appellant too was dismissed by the then Civil Judge on 19-2-1981. The judgment and decree passed in the earlier suit had attained finality. It was found by both the courts below that the suit of the plaintiff was barred by the principle of res-judicata. Both the courts below have recorded finding of fact on the point whether the water channel existed over plot no. 97-A or plot no. 97 or not. Learned trial court in its judgment has given a finding that there was no Gule on the spot, hence the suit of the plaintiff was not sustainable besides being barred by the principle of res-judicata.

No substantial question of law is involved in the present appeal, which is liable to be dismissed.

There is no force in the Second Appeal. Accordingly the appeal is dismissed in-limine.

(B.S. Verma, J.)

RCP